IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08-12-2006

CORAM

THE HON'BLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.14553 of 2002

P.Padmanabha Reddy .. Petitioner

Vs

1. The Board of Directors
   Indian Overseas Bank
   Central Office at No.763,
   Anna Salai, Chennai - 2.

2. The Chairman and Managing Director
   Indian Overseas Bank,
   Central Office,
   No.763, Anna Salai, Chennai - 2.

3. The General Manager
   Personnel Administration Department
   Supervisory Section,
   Indian Overseas Bank,
   Central Office,
   No.763, Anna Salai, Chennai - 2.

4. The Assistant General Manager
   Personnel Administration Department
   Supervisory Section,
   Indian Overseas Bank,
   Central Office,
   No.763, Anna Salai, Chennai - 2. ... Respondents

Petition filed under Article 226 of Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the first respondent, dated 16.02.2002, in Reg.No.PAD/SUP/177/358 and order of the second respondent, dated 07.12.2001 in Ref.No.PAD/SUP/177/170 and quash the same.

For Petitioner : Mr.M.S.Doraisamy, Senior Counsel
for M/s. Muthumani Doraisamy

For Respondents 1 to 4 : Mr.K.Srinivasamurthy

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O R D E R

Feeling aggrieved by the order of termination, dated 07.12.2001 and the subsequent order of their appeal, dated 16.02.2002, the petitioner has filed this writ petition, challenging the legality and the correctness of the termination.

2. The facts necessary to the disposal of the writ petition are that the petitioner was appointed as a Clerk in the respondent Bank on 05.07.1976. While so, he became sick person, since 1986, suffering with nervous weakness etc., and therefore, he was continuously applying leaves and unable to attend the duty. The petitioner also was on leave and loss of pay on several occasions. While so, the respondent Bank has transferred him from Chennai to Karaikudi and the petitioner made a representation that considering his ill health, he may be retained at Chennai. But the same was rejected by the respondents. Thereafter, the petitioner did not join at the new place, resulting notice from the Bank, dated 21.09.2001. The petitioner replied explaining his pathetic condition, but the Bank did not consider the same and finally issued a notice to report to duty, failing which his services will be terminated without further enquiry. The petitioner sent a reply, but the same was not considered and finally the impugned order of termination was passed on 07.12.2001 and the same was confirmed on the appeal.

3. Heard, Mr.M.S.Doraisamy, the learned Senior Counsel for the petitioner and Mr.K.Srinivasamurthy, the learned counsel for the respondents.

4. The short point for determination is whether the order of termination is legal. The petitioner's services are terminated by the respondent on Regulation 20(1) (a) and Regulation 20(1) (a) reads as follows :

> 20 (1) (a) Subject to sub-regulation (3) of regulation 1, where the bank is satisfied that the performance of an Officer is unsatisfactory or inadequate or there is a bonafide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank, and where it is not possible or expedient to proceed against him as per the disciplinary procedures, the Bank may terminate the services on giving him Three month's notice or emoluments in lieu thereof in accordance with the guidelines issued by the Government from time to time.

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This plain reading of the regulation discloses that the Bank is of the opinion that the performance of an officer is unsatisfactory or inadequate or there is a bonafide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank, and where it is not possible or expedient to proceed against him as per the disciplinary procedures, then only the bank is given an authority to terminate the services.

5. In the instant case, it is a debatable question that mere absence of the petitioner amounts to unsatisfactory or inadequate service. Admittedly, there is no impediment against the petitioner with regard to his integrity. In the instant case, the petitioner is contending that he is unwell from 1986 onwards and he was unable to attend the duty regularly and he was on leave on loss of pay on several occasions and the said fact has been communicated to the Bank and he is taking leaves in such case. It has to be verified whether the absence of the petitioner is unauthorised absence or authorised absence. Admittedly, the petitioner is absent from the duty, but, since the petitioner is intimating the facts, it can never be treated as unauthorised absence and this court under 3 or 4 cases explained what is mean by authorised absence and unauthorised absence. It may be the respondent to initiate action against the petitioner on the ground for his unauthorised absence and in this case, without conducting any enquiry, they have initiated, as if it is not possible. Further, regulation 20 (1) (c) says that the decision to terminate the service of an Officer employee under sub regulation (a) above will be taken only by the Chairman and Managing Director.

6. In the instant case, the termination order, as well as the order under appeal is totally silent, with regard to any decision taken by the Chairman and Managing Director. Even the first notice issued to the petitioner is not disclosing that the Chairman and Managing Director of the Bank has satisfied with the continuous absence of the petitioner in service is prejudicial to the Interests of the Bank or it is not advisable. Therefore, the respondent did not follow their own regulation 20 (1) (a). Therefore, the order of termination is liable to be quashed. With regard to the plain reading of regulation 20 (1) (a), discloses that the Bank has not followed its own regulation, in true sense and in fact, the bank should have considered the case of the petitioner with a sympathy, because the petitioner is making representation to the bank, that due to unhealth, he was not able to attend the duty and in this case, the petitioner had opted for Voluntary Retirement. When the employee was unable to continue in service and after expiry of all the leaves to his credit and he is continuing even on loss of pay, that should be decided either by the employer or by the court. Further, the employee sought for

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Voluntary Retirement and that itself indicate that he is really affected with some disease and the same fact was not considered and without considering this, the impugned order was issued and in my considered view, the impugned order is liable to be quashed.

7. The argument of the learned counsel for the respondents is that the petitioner did not produce any reliable medical certificates to prove that he is suffering with any disease, even though the petitioner is given an opportunity to prove the same.

8. We did not know whether the petitioner has got any medical certificate or medical record to be produced and the Bank without giving an opportunity, passed the order and therefore, I did not find any force in the arguments of the learned counsel for the respondents.

9. Whenever the employee is to enclose the entire medical record and the certificate of medical officer is sufficient, after the petitioner is given, if the bank is of the opinion that without any disease, the petitioner is contending that as if he is a sick person and if the petitioner fails to prove, then the adverse action drawn and the bank did not give any opportunity to the petitioner to produce his medical records.

10. The other contention of the learned counsel for the petitioner is that though the petitioner made a request for Voluntary Retirement, the same is not considered by the respondents, as the petitioner community is now under question and the same is cancelled by the concerned Revenue Authority and the same is now the subject matter of the review of the District Committee. It is unnecessary aspect, as far as this particular case is concerned. When the petitioner has made a request for Voluntary Retirement, on the ground that he is not well, the respondent should have considered.

11. The communication now issued by the bank to their counsel is produced before me and that also shows that the bank is not considering the the employee, who is sick, but to produce in the discipline, whether there is no indiscipline. "Discipline is highly essential in every walks of life, but it is not indiscipline. In the instant case, the order of dismissal, by way of termination is passed in the service law. Dismissal is the capital punishment and unfortunately, the employee should not resort to such punishment, unless there is serious misconduct by himself. In the instant case, the petitioner has admittedly intimating to the bank about his absence and the reasons for his absence.

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12. For all the foregoing reasons, the order of termination is quashed. However, the petitioner is not entitled to any backwages, as he did not do any work. It is stated that the terminal benefits, such as Gratuity and Provident Fund has been received by the petitioner already. Considering, totally all the circumstances, this Court is of the opinion that the petitioner has already applied for the Voluntary Retirement and the same has not been considered, however, the order of termination is passed, the same is quashed. Through this order, as the terminal benefits, such as Gratuity and Provident Fund are already settled, this Court is modifying the order of termination, as an order of compulsory retirement and the petitioner is entitled to all the terminal benefits.

13. With the above directions, the writ petition is allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

tsvn

To

1. The Board of Directors
   Indian Overseas Bank
   Central Office at No.763,
   Anna Salai, Chennai - 2.

2. The Chairman and Managing Director
   Indian Overseas Bank,
   Central Office,
   No.763, Anna Salai, Chennai - 2.

3. The General Manager
   Personnel Administration Department
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4. The Assistant General Manager
Personnel Administration Department
Supervisory Section,
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1 cc to M/s. Muthumani Doraisamy, Advocate, sr. 60913

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